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FEB - 1 2008
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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10 Attorneys for Defendants
11 VELOCITY EXPRESS LEASING, INC.; AND
12 VELOCITY EXPRESS, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 PHILIP JONES, and KIM KEO,
16 individually and on behalf of others
17 similarly situated, and on behalf of the
18 California general public,

18 Plaintiff,

19 v.

20 VELOCITY EXPRESS LEASING,
21 INC., also known as VELOCITY
22 EXPRESS LEASING WEST COAST,
23 INC., a Delaware Corporation;
24 VELOCITY EXPRESS, INC., a
25 Delaware Corporation; and DOES I
26 through 100, Inclusive,

24 Defendants.

Case No.

008-00773

DECLARATION OF DAMON M.
OTT IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL

Complaint Filed: November 6, 2007
(Alameda County Superior Court)

DECL. OF DAMON M. OTT ISO
NOTICE OF REMOVAL

Firmwide:84204096.1 057214.1004

1 I, DAMON M. OTT, do hereby declare and state as follows:

2 1. I am an attorney with the law firm of Littler Mendelson, a
3 Professional Corporation, counsel for Defendants Velocity Express Leasing Inc.
4 (erroneously also sued as an entity "also known as Velocity Express Leasing
5 West Coast, Inc.") and Velocity Express, Inc. (collectively "Defendants") in the
6 above-entitled matter. I am duly licensed to practice law in the State of
7 California and before the United States District Court for the Northern District
8 of California and am one of the attorneys responsible for representing
9 Defendants in this action. All of the information contained herein is based upon
10 my personal and first hand knowledge, unless otherwise indicated, and if called
11 and sworn as a witness, I could and would competently testify thereto.

12 2. I am informed and believe that on or about November 6, 2007,
13 Plaintiffs Philip Jones and Kim Keo (collectively "Plaintiffs") filed a Complaint
14 in the Superior Court of the State of California, County of Alameda, in the
15 above-captioned matter, Case No. RG 07354933. Attached as "Exhibit A" is a
16 true and correct copy of this Complaint.

17 3. I am informed and believe that on or about December 19, 2007,
18 Judge Robert Freedman of the Superior Court of the State of California, County
19 of Alameda, issued an order designating the case (Case No. RG 07354933)
20 complex pursuant to Rule 3.400 *et seq.* of the California Rules of Court.
21 Attached hereto as "Exhibit B" is a true and correct copy of the December 19,
22 2008 Order.

23 4. I am informed and believe that on or about January 3, 2008,
24 Plaintiffs served a copy of the Summons and Complaint upon Defendants.
25 Attached hereto as "Exhibit C" is a true and correct copy of the Notice of
26 Service of Process.

27 5. On January 24, 2008, the Superior Court of the State of California,
28 Judge Robert Freedman presiding, conducted an initial Complex Case

DECL. OF DAMON M. OTT ISO
NOTICE OF REMOVAL

2.

Firmwide:84204096.1 057214.1004

1 Management Conference. Through its counsel, Defendants entered a special
2 appearance at the Complex Case Management Conference for the sole purpose
3 of notifying the court of Defendants' intention to remove the case to federal
4 court. Plaintiffs appeared generally at the conference, but did not file a Case
5 Management Conference Statement.

6 6. On January 28, 2008, Plaintiffs' counsel, Stephen Glick, served a
7 Notice of Ruling dated January 25, 2008, which memorialized the
8 developments that occurred during the Complex Case Management Conference,
9 and noticed the next Complex Case Management Conference for February 28,
10 2008. Attached hereto as "Exhibit D" is a true and correct copy of the January
11 25, 2008 Notice of Ruling.

12 7. To the best of my knowledge, the above described documents,
13 which are attached hereto as Exhibits A, B, C, and D, constitute all of the
14 papers that have been filed or received in this action by Defendant.

15 8. To the best of my knowledge, the January 24, 2008 Complex Case
16 Management Conference is the only proceeding to have been conducted in the
17 Superior Court of the State of California, County of Alameda, in the above-
18 captioned matter.

19 9. I am informed and believe that Plaintiff Philip Jones is, and at all
20 times relevant to this action was, a citizen of the State of California.

21 10. I am informed and believe that Plaintiff Kim Keo is, and at all
22 times relevant to this action was, a citizen of the State of California.

23 11. I am informed and believe that the class members whom Plaintiffs
24 Philip Jones and Kim Keo purport to represent—the California-based courier
25 drivers who claim they are entitled to the relief sought in Plaintiffs'
26 Complaint—are, and at all times relevant to this action were, citizens of the
27 State of California.
28

1 I declare under penalty of perjury under the laws of the United
2 States of America that the foregoing is true and correct.

3 Dated this 1st day of February 2008 in San Francisco, California.
4

5 
6
7 DAMON M. OTT

8 Firmwide:84089356.2 057214.1004
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EXHIBIT A



SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

VELOCITY EXPRESS LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST, INC., a Delaware Corporation; VELOCITY EXPRESS, INC., a Delaware Corporation; and DOES 1 through 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PHILIP JONES and KIM KEO, individually and on behalf of all others similarly situated, and on behalf of the California general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
ALAMEDA COUNTY

NOV 13 2007

CLERK OF THE SUPERIOR COURT

By Cheryl A. Johnson
Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales (gratuitos de un programa de servicios legales sin fines de lucro). Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
ALAMEDA SUPERIOR COURT
1225 Fallon St.

Oakland, CA 94612

CASE NUMBER
(Número del caso) G07354938

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

STEPHEN GLICK

(213) 387-3400 (213) 387-7872

LAW OFFICES OF STEPHEN GLICK
1055 WILSHIRE BLVD., STE. 1480
LOS ANGELES, CA 90017

DATE: NOV 13 2007 PAT S. SWEETEN
(Fecha)

Clerk, by Cheryl A. Johnson, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

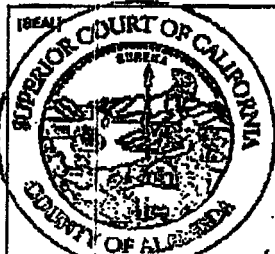
NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
other (specify):

4. ☐ by personal delivery on (date):



Form Approved for Mandatory Use
Judicial Council of California
SUM-100 (Rev. January 1, 2004)

SUMMONS

Legal
Solutions
CA PlusPage 1 of 1
Code of Civil Procedure §§ 416.20, 416.21



FILED
ALAMEDA COUNTY

NOV 06 2007

CLERK OF THE SUPERIOR COURT
By Cheng Watson
Deputy

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LAW OFFICES OF IAN HERZOG

Ian Herzog, State Bar No. 41396
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Telephone: (310) 458-6660
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Attorneys for Plaintiffs PHILIP JONES and KIM KEO individually and on behalf of all others
similarly situated, and on behalf of the California general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

PHILIP JONES, and KIM KEO, individually
and on behalf of all others similarly situated,
and on behalf of the California general public,

Plaintiff,

vs.

VELOCITY EXPRESS LEASING, INC. also
known as VELOCITY EXPRESS LEASING
WEST COAST, INC., a Delaware
Corporation; VELOCITY EXPRESS, INC., a
Delaware Corporation; and DOES 1 through
100, Inclusive,

Defendants.

Case No.: **R G 07 354933**

CLASS ACTION

COMPLAINT FOR:

1. RECOVERY OF UNPAID WAGES AND
PENALTIES (LABOR CODE §§ 201, 204, 206,
510, 558; IWC ORDER 5 § 3);

2. RECOVERY OF UNPAID MINIMUM
WAGES (LABOR CODE §§ 1194, 1197; IWC
ORDER 5 § 4);

3. FAILURE TO REIMBURSE FOR BUSINESS
EXPENSES (LABOR CODE §§2802, §2804;

- 1 -

COMPLAINT

Estrada v. Fedex Ground Package Sys. Inc., Cal. Ct. App., No. B189031, 8/13/07; Air Couriers Intern. v. Employment Development Dept., 150 Cal.App.4th 923, 59 Cal.Rptr.3d 37; JKH Enterprises, Inc. v. Department of Industrial Relations 142 Cal.App.4th 1046, 48 Cal.Rptr.3d 563);

4. FAILURE TO PAY ALL EARNED WAGES UPON SEPARATION (LABOR CODE § 203);

5. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS (LABOR CODE § 226);

6. UNFAIR BUSINESS PRACTICES, BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

Come now Plaintiffs PHILIP JONES and KIM KEO, individually, on behalf of all others similarly situated, and on behalf of the California general public, who complain and allege as follows:

JURISDICTION

1. This is a civil action seeking recovery of unpaid wages and waiting time penalties under California Labor Code §§ 1194 et seq., Labor Code §§ 201 et seq., and Labor Code §§ 500 et seq. This is also an action for recovery for violation of California Labor Code § 1197 for payment of less than minimum wages, violation of Labor Code § 2802 for failure to fully reimburse for business expenses, and Labor Code § 226(b) for failure to provide itemized employee wage statements. Plaintiff, on behalf of himself and all other members of the classes alleged herein, additionally brings an action for monetary damages for Defendants' violation of Business and Professions Code §§ 17200 et seq., including full restitution, compensation and benefits retained by Defendants as a result of their unlawful, fraudulent, and unfair business practices.

VENUE

2. Venue as to each Defendant is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5 as the acts complained of herein occurred in the County of Alameda. Each Defendant either owns, maintains offices, transacts business, has an agent or agents within Alameda County, or otherwise is found within Alameda County, and each Defendant is within the jurisdiction of this Court for purposes of service of process.

GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES

3. The acts complained of herein occurred within the last four (4) years preceding the filing of the complaint.

4. Plaintiffs PHILIP JONES and KIM KEO and the class they represent (hereinafter "the class") claim they were improperly classified as contract couriers or other similarly designated title and were not paid overtime wages, did not receive minimum wage, were not reimbursed for business expenses, were not paid if terminated or resigned, and who were not provided with itemized wage statements, as required by the various Labor Codes of the State of California and California Industrial Welfare Commission Order applicable to Defendants VELOCITY EXPRESS LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST, INC. and VELOCITY EXPRESS, INC.'S business.

5. Defendants, VELOCITY EXPRESS LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST, INC., and VELOCITY EXPRESS, INC., failed to properly pay overtime and minimum wages, failed to reimburse for business expenses, failed to pay all earned wages upon separation, and failed to provide itemized wage statements to Plaintiffs, PHILIP JONES and KIM KEO, and the class they represent.

6. Defendants VELOCITY EXPRESS LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST, INC., knew that Plaintiffs, PHILIP JONES and KIM KEO, and the class they represent, were not being properly paid overtime wages, did not receive minimum wage, were not reimbursed for business expenses, were not paid if terminated or resigned, and were

1 not provided with itemized wage statements.

2 7. Plaintiffs PHILIP JONES and KIM KEO, and the class they represent are informed and
3 believe and thereupon allege that at all times mentioned herein, Defendants, VELOCITY EXPRESS
4 LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST, INC.,
5 VELOCITY EXPRESS, INC., and DOES 1 through 100, were and are, corporations duly organized
6 under laws of the State of Delaware and are duly qualified under the laws of the State of California
7 to conduct business within the State of California and does routinely conduct business in the County
8 of Alameda.

9 8. Defendants VELOCITY EXPRESS LEASING, INC. also known as VELOCITY
10 EXPRESS LEASING WEST COAST, INC., and VELOCITY EXPRESS, INC., own and operated
11 an industry, business and establishment in numerous separate geographic locations within the State
12 of California, including but not limited to Alameda County for the purpose of providing courier
13 services. Thus, Defendant is subject to California Labor Code §§ 1194, 1197, 2802, 226(b), 1226.7,
14 1512, 1211, 500 et seq., California Business and Professions Code §§ 17200 et seq. and the
15 applicable Industrial Welfare Commission Order 9 (Title 8, California Code of Regulations §§
16 11000, 11090).

17 9. Plaintiffs PHILIP JONES and KIM KEO, and the class they represent, are ignorant of the
18 true names or capacity of the Defendants sued herein under the fictitious names DOE 1 through 100,
19 inclusive; and they are therefore sued pursuant to Code of Civil Procedure § 474. When their true
20 names and capacity are ascertained, PHILIP JONES and KIM KEO will amend this complaint by
21 inserting their true names and capacity herein. PHILIP JONES and KIM KEO are informed and
22 believe, and based thereon alleges, that Defendants DOE 1 through 100, inclusive, hereinafter
23 collectively referred to as "DOES," acted wrongfully, maliciously, intentionally and negligently; that
24 each is responsible in some manner for the events and happenings complained of herein; and that
25 injuries of PHILIP JONES and KIM KEO and the class they represent, as alleged herein, were
26 proximately caused by Defendants DOES, either through said Defendants' own conduct or through
27 the conduct of their agents and/or employees.

1 10. PHILIP JONES and KIM KEO are informed and believe, and based thereon allege, that
2 at all relevant times, each of the Defendants, whether named or fictitiously named as DOE
3 (hereinafter collectively referred to as "DEFENDANTS"), was the merging entity, merged entity,
4 subsidiary, acquiring corporation, agent and/or employee of each of the remaining DEFENDANTS
5 and, in doing the things hereinafter alleged, was acting within the course and scope of such agency
6 and/or employment with the knowledge, advice, permission and consent of each other.

7 11. Labor Code § 1194 permits an aggrieved employee to bring a private right of action for
8 failure to receive the legal overtime rate of pay.

9 12. Plaintiffs PHILIP JONES and KIM KEO, and the class they represent, are authorized to
10 bring this action pursuant to California Labor Code § 1194.

11 13. At all times herein mentioned, DEFENDANTS were subject to the Labor Codes of the
12 State of California, and to the existing and applicable Industrial Welfare Commission Order 9 (Title
13 8, California Code of Regulations § 11090).

14 14. Plaintiffs PHILIP JONES and KIM KEO, and the class they represent, are seeking
15 damages for the Labor Code violations for the past three years prior to the filing of this complaint
16 pursuant to Ca. Code. of Civ. Pro. §338(a).

17 15. As for the fourth year prior to the filing of this complaint, Plaintiffs, PHILIP JONES and
18 KIM KEO and the class they represent would be entitled to restitution and/or back pay pursuant to
19 Business and Professions Code § 17200 and *Cortez vs. Purolator Air Filtration Products Co.* (2000)
20 23 Cal. 4th 163, 178.

21 16. Plaintiffs PHILIP JONES and KIM KEO and the class they represent have incurred, and
22 during the pendency of this action will continue to incur, expenses for attorney's fees and costs
23 herein. Plaintiffs, PHILIP JONES and KIM KEO, and the class they represent request that the court
24 award attorney's fees and costs in an amount according to proof pursuant to Labor Code §1194.

25 17. Plaintiffs PHILIP JONES and KIM KEO, and the class they represent seek interest
26 pursuant to Labor Code § 218.6. That code states that in any action brought for the nonpayment of
27 wages, the Court shall award interest on all due and unpaid wages at the rate of interest specified in
28

1 subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall
2 accrue from the date that the wages were due and payable[.]” PHILIP JONES and KIM KEO and
3 the class they represent are entitled to said interest.

4 5 CLASS ALLEGATIONS

6 18. PHILIP JONES and KIM KEO are members of the class they represent, which include
7 the following subclasses:

8 Sub-Class No. 1: All California-based couriers or other similar titles who claim they
9 were not paid overtime compensation from VELOCITY EXPRESS LEASING, INC.
10 also known as VELOCITY EXPRESS LEASING WEST COAST, INC. and/or
11 VELOCITY EXPRESS, INC. within the last four (4) years from the filing of this
12 complaint, up to and including the time of Trial;

13
14 Sub-Class No. 2: All California-based couriers or other similar titles who claim they
15 were not paid minimum wage compensation from VELOCITY EXPRESS
16 LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST,
17 INC. and/or VELOCITY EXPRESS, INC. within the last four (4) years from the
18 filing of this complaint, up to and including the time of Trial;

19
20 Sub-Class No. 3: All California-based couriers or other similar titles who claim they
21 were not fully reimbursed for business expenses from VELOCITY EXPRESS
22 LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST,
23 INC. and/or VELOCITY EXPRESS, INC. within the last four (4) years from the
24 filing of this complaint, up to and including the time of trial;

25
26 Sub-Class No. 4: All California-based couriers or other similar titles who claim they
27 were not timely paid wages due upon separation from VELOCITY EXPRESS
28

1 LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST,
2 INC. and/or VELOCITY EXPRESS, INC. within the last four (4) years from the
3 filing of this complaint, up to and including the time of trial; and
4

5 Sub-Class No. 5: All California-based couriers or other similar titles who claim they
6 were not provided itemized employee wage statements from VELOCITY EXPRESS
7 LEASING, INC. also known as VELOCITY EXPRESS LEASING WEST COAST,
8 INC. and/or VELOCITY EXPRESS, INC. within the last four (4) years from the
9 filing of this complaint, up to and including the time of trial;
10

11 19. Plaintiffs reserve the right under Rule 3.675(b) California Rules of Court to amend or
12 modify the class description with greater specificity or further division into the subclasses or
13 limitation to particular issues.

14 20. There is a well-defined community of interest in the questions of law and fact affecting
15 the Plaintiffs' class in that:

- 16 a) each of the Plaintiffs has been employed by Defendants within the State of
17 California;
18 b) KIM KEO and the class he represents were not paid overtime compensation;
19 c) each of the Plaintiffs were not paid minimum wage compensation;
20 d) each of the Plaintiffs were not fully reimbursed for business expenses;
21 e) each of the Plaintiffs were not timely paid wages due upon separation;
22 f) each of the Plaintiffs were not provided itemized employee wage statements.

23 21. In addition to the concerted and joint activities alleged herein, Plaintiffs are informed
24 and believe, and based thereon allege, that each of the DEFENDANTS engage in the same practices
25 and have adopted the same policies with regard to their wrongful acts against Plaintiffs as alleged
26 herein.

27 22. Common questions of law and fact predominate over any questions of law or fact that
28

1 may affect only individual class members. The law applicable to each of the Plaintiffs and to each
2 of the DEFENDANTS is the same.

3 23. During the entire time Plaintiffs PHILIP JONES and KIM KEO were employed by
4 DEFENDANTS they were treated in the same manner that DEFENDANTS treated all other
5 Plaintiffs; and the claims of Plaintiffs PHILIP JONES and KIM KEO, are typical of those of all
6 other Plaintiffs in the class.

7 24. Plaintiffs PHILIP JONES and KIM KEO are competent and capable of fairly and
8 adequately representing the interests of the class and have retained competent legal counsel
9 experienced in large wage and hour employment cases.

10 25. Maintaining this lawsuit as a class action is a fair and efficient method for adjudication
11 of the controversies involved and will benefit the parties and the court for the following reasons:

- 12 a) the bringing of separate actions involving these common issues of fact and law would
13 prove more costly and inefficient than bringing this as a single action;
- 14 b) separate actions will create the risk of disparate and conflicting results;
- 15 c) the individual Plaintiffs in the class are so numerous that joinder of all such persons
16 is impracticable, making the disposition of their claims in a single class action,
17 instead of numerous individual actions, of benefit to the parties;
- 18 d) the individual amounts involved are small in relation to the difficulty of the litigation
19 required, so that individual actions or other individual remedies are impracticable;
- 20 e) the costs of litigating individual actions would be much higher than the costs of
21 litigating this class action and would unreasonably consume the amounts that would
22 be recovered;
- 23 f) the burden imposed on the judicial system by numerous individual actions would far
24 outweigh any burden imposed on the system by this class action;
- 25 g) DEFENDANTS will benefit in that they will not be compelled to respond to multiple
26 duplicative complaints, motions, interrogatories, demands to produce, depositions,
27 etc.;
- 28

- 1 h) the courts of Alameda will be burdened with multiple individual actions and multiple
 2 duplication of effort in resolving similar and identical issues of fact and law; and,
 3 i) the prosecution of individual remedies by members of the plaintiff class would tend
 4 to establish inconsistent standards of conduct for the DEFENDANTS and to result in
 5 the impairment of class members' rights and the disposition of their interests through
 6 actions to which they were not parties.

7 26. Plaintiffs PHILIP JONES and KIM KEO have incurred, and during the pendency of this
 8 action will continue to incur, expenses for attorney's fees and costs herein. Such attorney's fees and
 9 costs are necessary for the prosecution of this action and will result in a benefit to each of the
 10 members of the class.

11
 12 **FIRST CAUSE OF ACTION**

13 **RECOVERY OF UNPAID WAGES AND PENALTIES**

14 Brought by Plaintiffs against all Defendants

15 (LABOR CODE §§ 201, 204, 206, 510, 558, 1194, 1198; IWC ORDER 9 § 3(A) (Title 8 Cal.
 16 Code of Reg. § 11090));

17 27. Plaintiffs refer to and incorporate herein by reference thereto all paragraphs of this
 18 complaint as though fully set forth herein.

19 28. Plaintiffs were non-exempt employees entitled to the protections of Industrial Welfare
 20 Commission Order 9 (Title 8 of the California Code of Regulations § 11090) and California Labor
 21 Code §§ 200, 500, 510, 558, 1194, and 1198.

22 29. At all times herein mentioned, DEFENDANTS were subject to the Labor Codes of the
 23 State of California, and to the existing and applicable Industrial Welfare Commission 9 (Title 8,
 24 California Code of Regulation § 11090).

25 30. Labor Code § 1194 permits an aggrieved employee to bring a private right of action for
 26 failure to receive the legal overtime rate of pay.

27 31. Title 8 of California Code of Regulations § 11090(3)(a) requires DEFENDANTS to pay
 28

1 to each non-exempt employee who works more than 40 hours in a workweek, overtime
2 compensation of one and one-half times such employee's regular rate of pay for all hours worked in
3 excess of 40 hours.

4 32. Labor Code § 510 requires DEFENDANTS to pay its non-exempt employees at the rate
5 of no less than one and one-half times the regular rate of pay for any hours worked in excess of eight
6 hours in one workday; any work in excess of 40 hours in any one workweek; and the first eight
7 hours worked on the seventh day of work in any one workweek. Any work in excess of 12 hours in
8 one day and any work in excess of eight hours on any seventh day of a workweek shall be
9 compensated at the rate of no less than twice the regular rate of pay of any employee.

10 33. At all times herein mentioned, DEFENDANTS were subject to California Labor Code §
11 1198 which states that "the maximum hours of work and the standard conditions of labor fixed by
12 the commission shall be the maximum hours of work and the standard conditions of labor for
13 employees. The employment of any employee for longer hours than those fixed by the order or
14 under conditions of labor prohibited by the order is unlawful."

15 34. Plaintiffs and all members of the classes identified herein were and are employed and
16 scheduled as a matter of established company policy to work and in fact worked as couriers for
17 DEFENDANT, in excess of eight (8) hours per day and in excess of forty (40) hours per work week
18 without receiving straight time or overtime compensation for such excess hours worked in violation
19 of California Labor Code §§ 1194, 1197, and 1199 and the relevant California Industrial Welfare
20 Commission orders.

21 35. Plaintiffs are informed and believe and thereon allege that the class was paid on a
22 percentage basis with no overtime compensation paid for work accomplished in excess of forty (40)
23 hours per week, or eight (8) hours per day.

24 36. Plaintiffs are further informed and believe based thereon allege that DEFENDANTS,
25 and each of them, consistently administered a corporate policy regarding both staffing levels and
26 duties and responsibilities of the members of the classes which required that members of the classes
27 to work overtime without pay.

1 37. The obligations and responsibilities of the "Courier" positions are virtually identical
2 from region to region, district to district, facility to facility, and employee to employee. Further, any
3 differences in job activities between the different individuals in these positions were and are legally
4 insignificant to the issues presented by this action as the central facts remain that Plaintiffs PHILIP
5 JONES and KIM KEO and each and every member of the classes mentioned herein, performed
6 work in excess of forty (40) hours per week and/or eight (8) hours per day and they were not, and
7 have never been, paid overtime compensation for their work.

8 38. As a pattern and practice, in violation of the aforementioned labor laws and wage orders
9 of the State of California, DEFENDANTS, and each of them, did not maintain any accurate records
10 pertaining to when couriers began and ended each work period, meal period, the total daily hours
11 worked, and the total hours worked per pay period and applicable rates of pay.

12 39. Plaintiffs and members of the classes identified herein are current and former employees
13 of DEFENDANTS. Further, Plaintiffs are informed and believe and based thereon allege that
14 DEFENDANTS, and each of them had and/or have numerous manuals, letters, correspondence,
15 policy handbooks and the like which taken together constitute, created or comprise, a written
16 contract for employment. Nowtwithstanding, the DEFENDANTS, and each of them, in violation of
17 California Labor Code § 1194, 1197, 1199, had a consistent and uniform policy, practice and
18 procedure of willfully failing to pay the earned and unpaid wages of such individuals, including, but
19 not limited to, regular time, overtime, vacation time, and other wages earned and remaining
20 unreimbursed according to amendment or proof.

21 40. The pattern, practice and uniform administration of corporate policy regarding illegal
22 employee compensation as described herein is unlawful and creates an entitlement to recovery by
23 the Plaintiffs and the class they represent, in a civil action, for the unpaid balance of the full amount
24 of the straight time compensation and overtime premiums owing, including interest thereon, willful
25 penalties, reasonable attorneys fees, and cost of suit according to the mandate of California Labor
26 Code § 1194 et seq. and Labor Code §§ 500 and 558.

27 41. The Plaintiff class is entitled to an award of attorney fees under California Code of Civil
28

1 Procedure § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause
 2 of action will be an enforcement of an important right affecting the public interest, because such an
 3 award will result in significant benefit to the general public or a large class of persons whether there
 4 is a pecuniary or non-pecuniary recovery and because there was a substantial burden of private
 5 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
 6 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
 7 met the criteria stated in California Code of Civil Procedure § 1021.5 for awarding such fees.

8 42. In the alternative, pursuant to Labor Code § 218.6, in any action brought for the
 9 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
 10 interest specified in subdivision (b) of § 3289 of the Civil Code [currently 10 percent per annum],
 11 which shall accrue from the date that the wages were due and payable. Plaintiffs are entitled to said
 12 interest.

13 SECOND CAUSE OF ACTION

14 Failure to pay Minimum Wages

15 Brought by PLAINTIFFS against all DEFENDANTS

16 (Labor Code §§ 200, 218.6, 1194, 1194.2, 1198; IWC ORDER 9 § 3(A) (Title 8 Cal. Code of
 17 Reg. § 11090))
 18

19 43. Plaintiffs refer to and incorporate herein by reference thereto all of the paragraphs of this
 20 complaint.

21 44. At all times herein mentioned, Plaintiffs were employed by DEFENDANTS as couriers.
 22 Plaintiffs' positions, therefore, do not fall within the professional, administrative, or executive
 23 exemptions.

24 45. Plaintiffs were non-exempt employees entitled to the protections of IWC Order 9-2001
 25 (Title 8 of the California Code of Regulations § 11090), and California Labor Code § 200, 500,
 26 1194, 1197, and 1198.

27 46. At all times herein mentioned, DEFENDANTS were subject to the Labor Codes of the
 28

1 State of California, and to the existing and applicable IWC Order 9-2001 (Title 8, California Code
2 of Regulations §§ 11000, 11090). IWC 9 (4) requires DEFENDANTS to pay each non-exempt
3 employee wages of not less than six dollars and seventy-five cents per hour for all hours worked,
4 effective January 1, 2002, and not less than seven dollars and fifty cents per hour for all hours
5 worked, effective January 1, 2007.

6 47. Labor Code § 1197 states that "the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
8 minimum so fixed is unlawful."

9 48. Labor Code § 1198 states that "the maximum hours of work and the standard conditions
10 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
11 of labor for employees. The employment of any employee for longer hours than those fixed by the
12 order or under conditions of labor prohibited by the order is unlawful."

13 49. Labor Code § 1194(a) permits an aggrieved employee to bring a private right of action
14 for failure to receive the legal minimum wage.

15 50. For the past four (4) years prior to the filing of this complaint and to the present,
16 DEFENDANT has improperly calculated Plaintiffs' earnings by a percentage formula which
17 resulted in Plaintiffs earning less than minimum wage in the State of California. The formula used
18 by DEFENDANT was based on a percentage of the Courier's bookings.

19 51. Pursuant to Labor Code § 1194.2, in any action brought forth under Labor Code § 1194
20 by an employee to recover compensation for minimum wage violations, the employee is also entitled
21 to recover liquidated damages in the amount of the unpaid compensation plus interest thereon.
22 Plaintiffs are entitled to recover said liquidated damages plus interest thereon.

23 52. Plaintiffs are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor
24 Code § 1194(a), for bringing this action.

25 53. The Plaintiff class is entitled to an award of attorney fees under Code of Civil Procedure
26 § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause of action
27 will be an enforcement of an important right affecting the public interest, because such an award
28

1 will result in significant benefit to the general public or a large class of persons whether there is a
 2 pecuniary or non-pecuniary recovery and because there was a substantial burden of private
 3 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
 4 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
 5 met the criteria stated in Code of Civil Procedure § 1021.5 for awarding such fees.

6 54. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the
 7 court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision
 8 (b) of Section 3289 of the Civil Code currently 10 percent per annum, which shall accrue from the
 9 date that the wages were due and payable. Plaintiffs are entitled to said interest.

10 THIRD CAUSE OF ACTION

11 FAILURE TO REIMBURSE PLAINTIFFS FOR BUSINESS EXPENSES

12 Brought by PLAINTIFFS against all DEFENDANTS

13 (Labor Code §§ 2802, 2804; Estrada v. Fedex Ground Package Svs. Inc., Cal. Ct. App., No.
 14 B189031, 8/13/07; Air Couriers Intern. v. Employment Development Dept., Cal.App.4th 923,
 15 59 Cal.Rptr.3d 37; JKH Enterprises, Inc. v. Department of Industrial Relations, 142
 16 Cal.App.4th 1046, 48 Cal.Rptr.3d 363)

17 55. Plaintiffs refer to and incorporate all of the paragraphs of this complaint as though fully
 18 set forth herein.

19 56. Within 4 years last past, Plaintiffs were, and are as matter of established company
 20 policy, required to use their personal vehicles as a condition of and a discharge of their employment
 21 duties. Plaintiffs PHILIP JONES and KIM KEO and the class they represent, pursuant to
 22 Defendants' policy, were not reimbursed for insurance, mileage, uniforms, maintenance and repair
 23 expenses, cleaning, personal property or sales taxes and fuel, oil and tire expenses, and any and all
 24 equipment as required by DEFENDANTS to communicate with DEFENDANTS and/or its
 25 customers and to handle and track shipments according to DEFENDANTS' and its customers
 26 package tracking requirements.
 27
 28

1 57. At all times herein mentioned, DEFENDANTS were subject to Labor Code § 2802,
2 which states that "an employer shall indemnify his or her employees for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
4 his or her obedience to the directions of the employer."

5 58. At all times herein mentioned, DEFENDANTS were subject to Labor Code § 2804,
6 which states that "any contract or agreement, express or implied, made by any employee to waive
7 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
8 employee or his personal representative of any right or remedy to which he is entitled under the laws
9 of this State."

10 59. As a proximate result of DEFENDANTS' policy which is in violation of labor Code
11 Sections 2802 and 2804, Plaintiffs have been damaged in a sum which will be shown according to
12 proof to be in excess of the jurisdictional minimum of this court.

13 60. Plaintiffs are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor
14 Code § 2802(c) for bringing this action.

15 61. The Plaintiff class is entitled to an award of attorney fees under California Code of Civil
16 Procedure § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause
17 of action will be an enforcement of an important right affecting the public interest, because such an
18 award will result in significant benefit to the general public or a large class of persons whether there
19 is a pecuniary or non-pecuniary recovery and because there was a substantial burden of private
20 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
21 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
22 met the criteria stated in California Code of Civil Procedure § 1021.5 for awarding such fees.

23 62. Pursuant to Labor Code § 2802(b), in any action brought for the reimbursement of
24 necessary expenditures under this section shall carry interest at the same as judgments in civil
25 actions. Interest shall accrue from the date on which the employee incurred the necessary
26 expenditure. Plaintiffs are entitled to said interest.

FOURTH CAUSE OF ACTION

**LABOR CODE § 203 FOR FAILURE TO PAY ALL EARNED WAGES UPON
DISCHARGE**

Brought by PLAINTIFFS against all DEFENDANTS

(Labor Code §§ 201, 202 and 203)

63. Plaintiffs refer to and incorporate all of the paragraphs of this complaint as though fully set forth herein.

64. At all times herein mentioned, DEFENDANTS were subject to the Labor Codes of the State of California, and to the existing and applicable IWC Order 9-2001 (Title 8, California Code of Regulations §§ 11000, 11090).

65. Labor Code §§ 201 and 202 require that an employer pay all wages due to an employee after said employee is discharged or quits.

66. Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed thirty (30) days.

67. Courts have held that the term willful means "[t]he employer 'intentionally failed or refused to perform an act which was required to be done.'... It does not mean that the employer's refusal to pay wages must necessarily be based on a deliberate evil purpose to defraud workers for wages which the employer knows to be due." *Road Sprinkler Fitters Local Union No. 669 vs. G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 781.

68. DEFENDANTS continue to fail to pay all class members, who separated from DEFENDANTS during the four (4) years last past, for the overtime wages, minimum wages, and reimbursements for business expenses as alleged herein.

69. DEFENDANTS' failure to pay wages as alleged was willful in that DEFENDANTS refused to pay said amounts knowing that Plaintiffs had worked overtime. As a consequence, Plaintiffs are entitled to penalties under Labor Code § 203, which provides that an employee's

1 wages shall continue as a penalty until paid for a period of up to 30 days from the time they were
2 due, whichever period is shorter.

3 70. DEFENDANTS failed to pay Plaintiffs the alleged amounts of unpaid wages and have
4 continued to fail to pay those sums for over 30 days. Pursuant to the provisions of Labor Code §
5 203, Plaintiffs are entitled to a waiting time penalty, which is plaintiff's daily rate, as of the date of
6 separation, multiplied by 30 days. These penalties are owed and unpaid.

7 71. DEFENDANTS failed to pay all class members the alleged amounts of unpaid wages on
8 the date of their separation and have continued to fail to pay those sums. Pursuant to the provisions
9 of Labor Code § 203. These penalties are owed and unpaid.

10 72. The penalties set forth in Labor Code § 203 may be pursued through this action.

11 73. The Plaintiff class is entitled to an award of attorney fees under California Code of Civil
12 Procedure § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause
13 of action will be an enforcement of an important right affecting the public interest, because such an
14 award will result in significant benefit to the general public or a large class of persons whether there
15 is a pecuniary or non-pecuniary recovery and because there was a substantial burden of private
16 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
17 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
18 met the criteria stated in California Code of Civil Procedure § 1021.5 for awarding such fees.

19 74. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the
20 Court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision
21 (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall accrue from the
22 date that the wages were due and payable[.] Plaintiffs are entitled to said interest.

23 75. Plaintiffs are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor
24 Code §1194(a) for bringing this action.

FIFTH CAUSE OF ACTION

LABOR CODE § 226 FOR FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS

Brought by PLAINTIFFS against all DEFENDANTS

(Labor Code §§ 226, 226.3, 1174, 1174.5; IWC Order 9 § 7 (Title 8 Cal. Code of Reg. § 11090))

76. Plaintiffs refer to and incorporate all of the paragraphs as though fully set forth herein.

77. Labor Code § 226 requires DEFENDANTS, at the time of each payment of wages, to furnish each employee an accurate, itemized statement, in writing, showing gross wages earned, total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the IWC, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The DEFENDANTS are required to keep a copy of the statement or a record of the deductions shall be kept on file for at least three years at the place of employment or at a central location within the State of California.

78. Labor Code § 226(e) states that "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

79. When construing "willful" in the context of wage and hour labor code violations, Courts have held that the term willful means "[t]he employer 'intentionally failed or refused to perform an act which was required to be done.' ... It does not mean that the employer's refusal to pay wages must necessarily be based on a deliberate evil purpose to defraud workers for wages which the employer knows to be due." *Road Sprinkler Fitters Local Union No. 669 vs. G & G Fire Sprinklers*,

1 *Inc.* (2002) 102 Cal. App. 4th 765, 781.

2 80. Labor Code § 1174 requires every person employing labor in the State of California to
3 keep payroll records showing the hours worked daily by and the wage paid to each employee.

4 81. Industrial Welfare Commission Order 9 § 9 (Title 8, California Code of Regulation §
5 11090), in addition to language similar to Labor Code § 226, expressly mandates that the employer
6 keep "Time records showing when the employee begins and ends each work period. Meal periods,
7 split shift intervals and total daily hours worked shall also be recorded."

8 82. For the last four (4) years prior to the filing of this complaint, DEFENDANTS failed to
9 comply with Labor Code §§ 226, 1174, and IWC Order 9 § 7, by failing to maintain accurate records
10 which employers are required to maintain, including, but not limited to, records of meal periods,
11 hours work, rest periods, and all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 83. As a result of DEFENDANTS' failure to keep the accurate required records,
14 DEFENDANTS are subject to the penalties set forth in Labor Code § 226(e)

15 84. The Plaintiff class is entitled to an award of attorney fees under California Code of Civil
16 Procedure § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause
17 of action will be an enforcement of an important right affecting the public interest, because such an
18 award will result in significant benefit to the general public or a large class of persons whether there
19 is a pecuniary or non-pecuniary recovery and because there was a substantial burden of private
20 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
21 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
22 met the criteria stated in California Code of Civil Procedure § 1021.5 for awarding such fees.

23 85. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the
24 Court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision
25 (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall accrue from the
26 date that the wages were due and payable[.] Plaintiffs are entitled to said interest.

27 86. Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to Labor Code
28

1 § 226.

2
3 **SIXTH CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

5 **Brought by PLAINTIFFS against All DEFENDANTS**

6 **(Bus. and Prof. Code §§ 17200 et seq.)**

7 87. Plaintiffs refer to and incorporate all of the paragraphs of this complaint as though fully
8 set forth herein.

9 88. Plaintiffs are suing DEFENDANTS pursuant to Business and Professions Code §§
10 17200, et seq.

11 89. By violating the statutes and regulations as alleged herein, DEFENDANTS' acts
12 constitute unlawful and unfair business practices under California Business and Professions Code §§
13 17200 et seq. Since four (4) years last past, DEFENDANTS violated and continue to violate the
14 law, as expressed in Labor Code §§ 200, 221, 226, 500, 510, 512, 1174, 1194, 1197, 1198; IWC 9
15 §§ 2, 3, 4, 7 (Title 8 Cal. Code of Reg. § 11090); and, Business & Professions Code §§ 17200 et
16 seq., by failing to properly pay wages, properly pay overtime wages, failing to keep proper records,
17 and other violations alleged herein.

18 90. DEFENDANTS' violations of the statutes and regulations as alleged herein are business
19 practices done repeatedly over a significant period of time, in California, and in a systematic manner
20 to the detriment of Plaintiffs.

21 91. The harm to Plaintiffs outweighs any utility of DEFENDANTS' policies and practices,
22 as alleged herein, and consequently constitute unfair business acts or practices within the meaning of
23 Business and Professions Code §§ 17200 et seq.

24 92. As a direct and proximate result of the aforementioned acts by DEFENDANTS,
25 DEFENDANTS wrongfully retained and continue to retain funds earned by Plaintiffs, according to
26 proof at the time of trial.

27 93. The unfair and unlawful business acts and practices described herein present a
28

1 continuing threat to Plaintiffs and the California general public. Plaintiffs are informed and believe
2 and on such basis allege that DEFENDANTS have engaged in such practices over a number of years
3 and have failed to indicate, in any way, that they plan to cease such activities any time in the future.

4 94. Within the (4) years preceding the filing of this action, Plaintiffs have suffered damages
5 and request back pay and/or restitution of all monies and profits to be disgorged from
6 DEFENDANTS in an amount according to proof at time of trial, but in excess of the Court's
7 jurisdiction requirement, generally, including all awardable amounts, is over \$25,000.

8 95. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to the
9 equitable powers of this court, DEFENDANTS should be preliminarily and permanently enjoined
10 from their unfair and unlawful business acts and practices.

11 96. Pursuant to Business and Professions Code §§ 17200 et seq., and pursuant to the
12 equitable powers of this court, DEFENDANTS should be ordered to disgorge and to restore to
13 Plaintiffs all funds DEFENDANTS retained by means of the unfair and unlawful business acts and
14 practices alleged herein.

15 97. Plaintiffs also seek interest pursuant to Business & Professions Code § 17203; *Ballard*
16 *vs. Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and *Irwin vs.*
17 *Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956 and costs of suit pursuant to Cal. Code of Civ.
18 Pro. § 1032.

19 98. The Plaintiff class is entitled to an award of attorney fees under California Code of Civil
20 Procedure § 1021.5 because an award of damages, restoration and/or injunctive relief for this cause
21 of action will be an enforcement of an important right affecting the public interest, because such an
22 award will result in significant benefit to the general public or a large class of persons whether there
23 is a pecuniary or non-pecuniary recovery and because there was a substantial burden of private
24 enforcement and such fees in the interest of justice should not be paid out of the recovery. Attorney
25 fees should be awarded to the Plaintiff class because this is a class action and the Plaintiff class has
26 met the criteria stated in California Code of Civil Procedure § 1021.5 for awarding such fees.

27 99. Pursuant to Labor Code § 218.6, in any action brought for the nonpayment of wages, the
28

1 Court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision
2 (b) of Section 3289 of the Civil Code [currently 10 percent per annum], which shall accrue from the
3 date that the wages were due and payable[.]” Plaintiffs are entitled to said interest.

4 100. In addition, Plaintiffs seek an award of reasonable attorney’s fees and costs pursuant to
5 Labor Code §§ 1194.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS, and each of them,
9 jointly and severally, as follows:

10
11 **FIRST CAUSE OF ACTION**

- 12 1. For all unpaid wages due and owing to Plaintiffs (PHILIP JONES and KIM KEO and
13 to the class they represent), plus interest thereon at the maximum legal rate accruing
14 from the date said amounts became due to the date paid;
- 15 2. That DEFENDANTS be ordered to pay Plaintiff (KIM KEO and the class he
16 represents) all unpaid overtime compensation pursuant to Labor Code §§ 1194 and
17 510 as alleged herein according to proof;
- 18 3. For reasonable attorney’s fees as provided by California Code of Civil Procedure
19 §1021.5;
- 20 4. For interest pursuant to Labor Code § 218.6; and
- 21 5. For reasonable attorney’s fees, costs, and interest as provided by Labor Code § 1194.

22
23 **SECOND CAUSE OF ACTION**

- 24 5. That DEFENDANTS be ordered to pay Plaintiffs (PHILIP JONES and KIM KEO
25 and to the class they represent) all unpaid minimum wage compensation as alleged
26 herein according to proof;
- 27 6. For liquidated damages pursuant to Labor Code §1194.2(a) in an amount equal to the
28

1 minimum wages unpaid and interest on that amount;

2 7. For reasonable attorney's fees as provided by California Code of Civil Procedure
3 §1021.5

4 8. For interest pursuant to Labor Code § 218.6;

5 9. For reasonable attorney's fees, costs, and interest as provided by Labor Code
6 §1194(a).

7
8 **THIRD CAUSE OF ACTION**

9 10. For interest pursuant to Labor Code § 218.6; and

10 11. For all expenses incurred such as insurance, mileage, uniforms, maintenance and
11 repair expenses, cleaning, personal property or sales taxes and fuel, oil and tire
12 expenses, and any and all equipment as required by DEFENDANTS to communicate
13 with DEFENDANTS and/or its customers and to handle and track shipments
14 according to DEFENDANTS' and its customers package tracking requirements;

15 12. For reasonable attorney's fees and cost as provided by Labor Code § 2802 and as
16 provided by California Code of Civil Procedure §1021.5;

17 13. For interest on all sums according to proof;

18 14. For all such other and further relief the court deems proper.

19
20 **FOURTH CAUSE OF ACTION**

21 15. For statutory waiting time penalty under Labor Code § 203, according to proof for
22 Plaintiffs (PHILIP JONES and KIM KEO and to the class they represent), plus
23 interest thereon at the maximum legal rate accruing from the 31st day following the
24 separation each such Plaintiffs' employment from DEFENDANTS;

25 16. For reasonable attorney's fees as provided by California Code of Civil Procedure
26 §1021.5;

27 17. For interest pursuant to Labor Code § 218.6; and
28

1 18. For reasonable attorney's fees and costs as provided by Labor Code § 1194(a).

2
3 **FIFTH CAUSE OF ACTION**

4 19. For penalties pursuant to Labor Code § 226(e)

5 20. For reasonable attorney's fees as provided by California Code of Civil Procedure
6 §1021.5;

7 21. For reasonable attorney's fees and costs as provided by Labor Code § 226(e); and,

8 22. For interest pursuant to Labor Code § 218.6.

9
10 **SIXTH CAUSE OF ACTION**

11 23. That DEFENDANTS be enjoined from continuing the practices that violate the
12 California Business and Professions Code §§ 17200, et seq.;

13 24. That DEFENDANTS be ordered to restore to Plaintiffs all funds retained by
14 DEFENDANTS due to DEFENDANTS' wrongful acts and practices as alleged
15 herein; For interest pursuant to Business & Professions Code § 17203; *Ballard vs.*
16 *Equifax Check Servs., Inc.* (ED CA 2001) 158 F. Supp. 2d 1163, 1176-1177; and
17 *Irwin vs. Mascott* (ND CA 2000) 112 F. Supp. 2d 937, 956;

18 ///

19 ///

20 ///

1 25. For reasonable attorney's fees as provided by California Code of Civil Procedure
2 §1021.5; and,

3 26. For court costs and other relief awardable by the court.
4

5 DATED: October 23, 2007

LAW OFFICES OF STEPHEN GLICK

LAW OFFICES OF IAN HERZOG

DANIELS, FINE, ISRAEL, SCHONBUCH &

LEBOVITS LLP

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11 By: 

Stephen Glick

Scott A. Brooks

Attorneys for Plaintiffs

12
13 PHILIP JONES and KIM KEO individually and
14 on behalf of all others similarly situated, and
15 the California general public.
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CM-010

ATTORNEY FOR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STEPHEN GLICK LAW OFFICES OF STEPHEN GLICK 1055 WILSHIRE BLVD., STE. 1480 LOS ANGELES, CA 90017 TELEPHONE NO.: (213) 387-3400 FAX NO.: (213) 387-7872		FOR COURT USE ONLY FILED ALAMEDA COUNTY NOV 06 2007 CLERK OF THE SUPERIOR COURT By <u>Chang J. J. J.</u> Deputy
ATTORNEY FOR PARTY (Name): PHILLIP JONES and KIM KEO SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		
CASE NAME: PHILLIP JONES and KIM KEO et al. v. VELOCITY EXPRESS LEASING, INC. et al.		CASE NUMBER: EC07354983 JUDGE: DEPT:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other: PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPD/WD (23) <input type="checkbox"/> Non-PUPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 6
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: October , 2007

STEPHEN GLICK

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plain filer must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Legal
Solutions
Co. PlusCal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (43) *If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto.*

Other PUP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PUP/DWD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/POWD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PUP/DWD

Non-PUP/DWD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (15)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PUP/DWD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (16)

Contract

Breach of Contract/Warranty (06)
Breach of Rental Leases
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed; open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (28)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential.*

Judicial Review

Appeal Forfeiture (05)
Petition for Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal.

Rules of Court Rules 3.400–3.403)
Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Slater State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-litton-complex)
Other Civil Complaint (non-litton-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short title: Philip Jones et al. v. Velocity Express Leasing et al.	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA.			
<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (445)		<input type="checkbox"/> Hayward Hall of Justice (447)	
		<input type="checkbox"/> Fremont, Gale Schonons Hall of Justice (448)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G)	Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PIPD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)	
	Product liability (34)	<input type="checkbox"/> 86 Product liability (no) asbestos or toxic tort/environmental (G)	
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)	
	Other PIPD/WD tort (23)	<input type="checkbox"/> 33 Other PIPD/WD tort (G)	
Non-PIP / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)	
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)	
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)	
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)	
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)	
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)	
	Other non-PIP/WD tort (35)	<input type="checkbox"/> 03 Other non-PIP/WD tort (G)	
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)	
	Other employment (15)	<input checked="" type="checkbox"/> 85 Other employment (G)	
		<input type="checkbox"/> 53 Labor union award confirmation	
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Warranty (06)	<input type="checkbox"/> 04 Breach contract / Warranty (G)	
	Collections (09)	<input type="checkbox"/> 81 Collections (G)	
	Insurance coverage (18)	<input type="checkbox"/> 85 Ins. coverage - non-complex (G)	
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 16 Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)	
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 04 Unlawful Detainer - commercial	Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential	
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs	
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture	
	Petition re: arbitration award (11)	<input type="checkbox"/> 82 Pet. re: arbitration award	
	Will of Marital (02)	<input type="checkbox"/> 49 Will of marital	
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation	
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect	
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort	
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation	
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental	
	Ins covrs from complex case type (41)	<input type="checkbox"/> 95 Ins covrs from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment	
		<input type="checkbox"/> 03 Confession of judgment	
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)	
	Other complaint (42)	<input type="checkbox"/> 89 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 08 Change of name	
		<input type="checkbox"/> 69 Other petition	

EXHIBIT B

Law Office of Steven Glick
 Attn: Glick, Steven
 1055 Wilshire Blvd.
 Suite 1480
 Los Angeles, CA 90017

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Jones Plaintiff/Petitioner(s) VS. Velocity Express Leasing, Inc. Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG07354933</u> Order Complaint - Other Employment
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The Complex Determination Hearing was set for hearing on 12/19/2007 at 02:00 PM in Department 20 before the Honorable Robert Freedman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. The matter is assigned for all purposes to Department 20 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq.

Courtesy (bench) copies of all filing should be delivered directly to Dept. 20 and may be left in the drop box when court is in session. The Court may also direct that certain filings be supplemented by an electronic copy (via e-mail to Dept.20@alameda.courts.ca.gov or by CD-ROM lodged with the clerk in Dept. 20). Any such electronic copy of documents shall be in Microsoft Word readable form (Microsoft Word, Word Perfect, a TIF or JPEG file inserted into a Word file, or any other format that can be saved in a Microsoft Word document). Each separate document (notice, points and authorities, declarations, requests for judicial notice, et al) must be in a separate file in the diskette and the computer files must be identified in a fashion to permit accurate identification by Court personnel (e.g. "Notice.doc," "Points and Authorities.doc," "Li Declaration.doc," "Johnson Declaration.doc," and "Proof of Service.doc," NOT "Quashnot.doc," "briefdraft3.doc," "Defdecl.doc," "Decl2revised.doc," or "Form5.doc.") Electronic media submitted will not be returned.

Calendar information, filings, and tentative rulings are available to the public at <http://www.co.alameda.ca.us/domainweb/>.

All motions and ex parte applications shall be noticed for hearing in Department 20. The parties shall reserve hearing dates and times by contacting the Department 20 courtroom clerk via email at Dept.20@alameda.courts.ca.gov. The courtroom clerk can also be contacted by phone at (510) 267-6936, but phone contact should be used very sparingly. E-mail is the preferred method of communication.

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a

Order

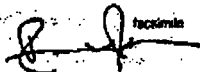
2008 JAN 28 AM 10:32

just, speedy and economical determination of the litigation.

The CCMC statements must address the following issues when applicable:

- A. A brief factual summary to assist the Court in understanding the background of the case, a statement of the issues presented, including each theory of liability and defense and a summary of the facts supporting each position taken, and the relief sought, including an estimate of damages.
- B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;
- C. Deadlines and limits on joinder of parties and amended or additional pleadings;
- D. Class discovery and class certification;
- E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;
- F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;
- G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:
 - (1) unserved parties and the reasons for the failure to serve;
 - (2) unserved and/or unfiled cross-complaints;
 - (3) related actions pending in any jurisdiction and the potential for coordination or consolidation;
 - (4) any possible jurisdictional or venue issues that may arise;
 - (5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;
 - (6) unresolved law and motion matters;
 - (7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation, judicial or contractual arbitration;
 - (8) severance of issues for trial; and
 - (9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date; and
- H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel [for plaintiff(s) and/or defendant(s)] to streamline service of process and/or management of discovery, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

Dated: 12/19/2007



Judge Robert Freedman

Order

SHORT TITLE: Jones VS Velocity Express Leasing, Inc.	CASE NUMBER: RG07354933
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ADDITIONAL ADDRESSEES

Daniels, Fine, Israel, Schonbuch &
Lebovits LLP
Attn: Brooks, Scott A.
1801 Century Park East
Ninth Floor
Los Angeles, CA 90067

Order

PROOF OF SERVICE**1013(a)CCP****STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 Wilshire Boulevard, Suite 1480, Los Angeles, California 90017.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On January 17, 2008, I served copies of the following documents:

ORDER OF DECEMBER 19, 2007

enclosed in a sealed envelope addressed as follows:

See Service List

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the addressee(s).

X (BY FACSIMILE) I transmitted an accurate copy via facsimile machine to the following person and telephone number:

X (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17 day of January 2008, at Los Angeles, California.


Kharen Perez

TOTAL P.05

Service List

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Paul R. Fine
Scott A. Brooks
Craig S. Monita
DANIELS, FINE, ISRAEL, SCHONBUCH & LEBOVITS
1801 Century Park East, Ninth Floor
Los Angeles, CA 90067
Fax (310) 556-2807

Ian Herzog
LAW OFFICES OF IAN HERZOG
233 Wilshire Blvd., Suite 550
Los Angeles, CA 90401
Fax (310) 458-9065

Brady J. Mitchell
LITTLER MENDELSON
2049 Century Park East
5th Floor
Los Angeles, CA 90067
Facsimile (310) 553-5583

P.05/05

213 387 7872

STEPHEN GLICK

JAN-28-2008 10:21

EXHIBIT C



CORPORATION SERVICE COMPANY

Notice of Service of Process

KUB / ALL
Transmittal Number: 5521479
Date Processed: 01/03/2008

Primary Contact: Jim Lindvall
Velocity Express Corporation
7803 Glenroy Road
Minneapolis, MN 55439

Entity:	Velocity Express, Inc. Entity ID Number 0493360
Entity Served:	Velocity Express, Inc.
Title of Action:	Phillip Jones vs. Velocity Express Leasing, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Alameda Superior Court, California
Case Number:	RG07354933
Jurisdiction Served:	California
Date Served on CSC:	01/03/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Stephen Gillick 213-387-3400

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com



CORPORATION SERVICE COMPANY

Notice of Service of Process

KUB / ALL
Transmittal Number: 5521525
Date Processed: 01/03/2008

Primary Contact: Jim Lindvall
Velocity Express Corporation
7803 Glenroy Road
Minneapolis, MN 55439

Entity:	Velocity Express Leasing, Inc. Entity ID Number 0664983
Entity Served:	Velocity Express Leasing, Inc. also known as Velocity Express Leasing West Coast, Inc.
Title of Action:	Philip Jones vs. Velocity Express Leasing, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Alameda Superior Court, California
Case Number:	RG07354933
Jurisdiction Served:	California
Date Served on CSC:	01/03/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Stephen Glick 213-387-3400

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT D

LAW OFFICES OF STEPHEN GLICK

Stephen Glick, CSB# 59404
 1055 Wilshire Boulevard, Suite 1480
 Los Angeles, California 90017
 Telephone: (213) 387-3400
 Fax: (213) 387-7872

DANIELS, FINE, ISRAEL, SCHONBUCH, & LEOVITS LLP

Paul R. Fine, State Bar No. 53514
 Scott A. Brooks, State Bar No. 160115
 Craig S. Momita, State Bar No. 163347
 1801 Century Park East, Ninth Floor
 Los Angeles California 90067
 Telephone: (310) 556-7900
 Facsimile: (310) 556-2807

LAW OFFICES OF IAN HERZOG

Ian Herzog, State Bar No. 41396
 233 Wilshire Boulevard, Suite 550
 Santa Monica, California 91401
 Telephone: (310) 458-6660
 Facsimile: (310) 458-9065

Attorneys for Plaintiffs PHILIP JONES and KIM KEO individually and on behalf of all others
 similarly situated, and on behalf of the California general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PHILIP JONES, and KIM KEO, individually and on behalf of all others similarly situated,
 and on behalf of the California general public, CLASS ACTION

Plaintiff,

vs.

VELOCITY EXPRESS LEASING, INC. also
 known as VELOCITY EXPRESS LEASING
 WEST COAST, INC., a Delaware
 Corporation; VELOCITY EXPRESS, INC., a
 Delaware Corporation; and DOES 1 through
 100, Inclusive,

Defendants.

Case No.:

NOTICE OF RULING

NOTICE OF RULING

2008 JAN 28 AM 10:32

1 The above captioned matter was set for a Complex Case Management Conference on
2 January 24, 2008. The Plaintiff appeared by Stephen Glick, the Defendant appeared by Andrew M.
3 Spurchise.
4

5 The Defendant advised the court that Defendant intends to remove the case to Federal Court.

6 The court continued the Case Management Conference until February 28, 2008 11:00 a.m. in
7 Department 20 and Counsel are to file a Complex Case Management Conference Statement 5 days
8 prior to that hearing.
9

10 The court also ordered Plaintiff's counsel to appear personally and show cause at that place,
11 date and time why sanctions should not be imposed for failure to file a Complex Case Management
12 Conference Statement.
13

14 DATED: January 25, 2008

LAW OFFICES OF STEPHEN GLICK

15
16 By: 
17

Stephen Glick

Attorney for Plaintiff

18 PHILIP JONES and KIM KEO individually
19 and on behalf of all others similarly situated,
20 and the California general public.
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PROOF OF SERVICE
1013(a)CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 Wilshire Boulevard, Suite 1480, Los Angeles, California 90017.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On January 28, 2008, I served copies of the following documents:

NOTICE OF RULING

enclosed in a sealed envelope addressed as follows:

See Service List

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the addressee(s).

X (BY FACSIMILE) I transmitted an accurate copy via facsimile machine to the following person and telephone number.

X (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 28 day of January 2008, at Los Angeles, California


Kharez Perez

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